



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**JUDICIAL REVIEW NO. 4 OF 2016**

**FORMERLY (CONST PETITION NO. 10 OF 2015)**

(Before Hon. Justice Mathews N. Nduma)

**IN THE MATTER OF APPLICATION UNDER ARTICLE 2(1), (5) AND**

**(6), 21(1), 22 AND 23 THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL**

**RIGHTS AND FREEDOMS UNDER ARTICLES 70, 72, 74,**

**78, 81, 82 OF THE CONSTITUTION OF KENYA 2010**

**WILLIS OKACH RANDIGA.....PETITIONER**

**VERSUS**

**HON. ATTORNEY GENERAL.....RESPONDENT**

**J U D G M E N T**

1. The Exparte Applicant Willis Okach Randiga filed this application on 16<sup>th</sup> April, 2016 seeking remedies arising from a dismissal and human rights violations by the Kenya Air force while he was a Senior Private I (SPTE-I) pursuant to the 1<sup>st</sup> August 1982, Attempted coup d'tat in Kenya.
2. In the application it is not explained why it was not filed with others which have been dealt with by the High Court, E & LRC and the Court of Appeal since the advent of multiparty democracy in 1992
3. It was argued and supported by the courts in **Stanley Waweru Kariuki v Attorney General, Petition 1370 of 2003, Harun Thungu Wakaba v Attorney General, Nairobi Miscellaneous Application 1411 of 2004, Oduor Ongwen and 20 others v Attorney General, Petition 777 of 2008** among others that it was difficult if not impossible to file suits arising from the failed coup during the Moi era and the courts have accommodated petitions filed as late as 2008, but not Judicial Review Applications. There must be a solid explanation as to why the applicant in this case has taken more than 35 years to bring this Judicial Review Application.
4. There is not a single explanation of the inordinate delay in filing this suit in the Application itself or in the affidavit and witness statement by the Exparte Applicant filed in support of the application.
5. Is it to be assumed therefore that matters arising from the 1982 coup d'tat have no time limitation and may be filed at any time, regardless of lack of inhabitations on the part of the Applicant?
6. In deciding matters, the courts are guided by Article 159(2) of the constitution as follows:-

**159 (2)**

**“In exercising judicial authority, the courts and tribunals shall be guided by the following principles –**

**(b) Justice shall not be delayed.”**

This provision applies to all who come before the temple of justice. Those who institute suits against others must circumstances allowing, file their cases at the earliest opportunity and not unduly, inconvenience and/or defeat the ends of justice by bringing cases, against other persons many years after the cause of action arose, thereby, making it impossible for the Respondents to avail witnesses and relevant documentation to defend themselves.

7. The condonation by the courts for persons who suffered injustice during the Moi era did not open a catablanche opportunity for parties to sleep on their rights and file suits anytime they want and not caring at all to give the slightest explanation as to why the suit has been filed 35 years later.

8. A court of law operates on facts before it and not on assumptions. Those who would wish to be condoned for late filing must place facts before court to allow such condonation.

9. In **James Kanyiita v Attorney General & Another, Nairobi Petition No. 180 of 2011** the court stated -

**“...Although there is no limitation period for filing proceedings to enforce fundamental rights and freedom, the court in considering whether or not to grant relief for rights under Section 84 of the constitution (repealed), is entitled to consider whether there has been inordinate delay in lodging the claims. The court is obliged to consider whether justice will be served by permitting a Respondent, whether an individual or the state, in any of its manifestations, to be vexed by an otherwise stale claim...”**

10. It is the court’s considered view that no justification has been placed before court for bringing this Exparte application 35 years from the date the cause of action arose.

11. Entertaining the same would cause grave injustice to the Respondent and encourage indolent persons without the slightest explanation to file stale applications against others, (Respondents) to their loss and detriment. The scales of justice must always be, and remain balanced but not blindly tilted in favour of litigants who have manifestly slept on their rights. In any event, the erstwhile constitution did not envisage, litigation to enforce fundamental rights and freedoms otherwise, but by filing constitutional petitions. Judicial Review applications under the Law Reform Act, had to be brought within six (6) months from the date the cause of action arose. For this reason also, the application is misconceived.

12. For these reason, the Application is struck off, for having been filed after inordinate delay.

13. There is no order as to costs.

**Judgment Dated, Signed and delivered this 18th day of October, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Olel for Exparte Applicant

M/s. Essendi for Respondent

Chrispo – Court Clerk